

110TH CONGRESS  
1ST SESSION

# H. R. 1338

To amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2007

Ms. DELAURO (for herself, Mr. HALL of New York, Mr. LEVIN, Mr. LARSON of Connecticut, Ms. DEGETTE, Ms. BORDALLO, Mr. SKELTON, Mr. HONDA, Ms. BERKLEY, Ms. SCHAKOWSKY, Mr. DOYLE, Mr. KILDEE, Mr. BOSWELL, Ms. CARSON, Mr. FILNER, Mr. OBERSTAR, Mr. WYNN, Ms. ESHOO, Mr. PRICE of North Carolina, Ms. SCHWARTZ, Mrs. MALONEY of New York, Mrs. CAPPS, Mr. HINCHEY, Mr. GEORGE MILLER of California, Mr. BUTTERFIELD, Mr. MORAN of Virginia, Mr. LANTOS, Ms. WOOLSEY, Ms. NORTON, Mr. DINGELL, Ms. MCCOLLUM of Minnesota, Mr. DOGGETT, Mr. OBEY, Mr. MOORE of Kansas, Ms. KILPATRICK, Mr. DEFazio, Mr. BERMAN, Ms. ZOE LOFGREN of California, Mrs. CHRISTENSEN, Mr. ALLEN, Mr. SHERMAN, Mr. CONYERS, Mr. KENNEDY, Mr. RYAN of Ohio, Mr. BACA, Ms. SOLIS, Mr. ELLISON, Mrs. MCCARTHY of New York, and Mr. GRIJALVA) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Paycheck Fairness  
3 Act”.

4 **SEC. 2. FINDINGS.**

5       Congress makes the following findings:

6           (1) Women have entered the workforce in  
7       record numbers over the past 50 years.

8           (2) Even today, women earn significantly lower  
9       pay than men for work on jobs that require equal  
10      skill, effort, and responsibility and that are per-  
11      formed under similar working conditions. These pay  
12      disparities exist in both the private and govern-  
13      mental sectors. In many instances, the pay dispari-  
14      ties can only be due to continued intentional dis-  
15      crimination or the lingering effects of past discrimi-  
16      nation.

17          (3) The existence of such pay disparities—

18            (A) depresses the wages of working fami-  
19       lies who rely on the wages of all members of the  
20       family to make ends meet;

21            (B) undermines women’s retirement secu-  
22       rity, which is often based on earnings while in  
23       the workforce;

24            (C) prevents the optimum utilization of  
25       available labor resources;

1 (D) has been spread and perpetuated,  
2 through commerce and the channels and instru-  
3 mentalities of commerce, among the workers of  
4 the several States;

5 (E) burdens commerce and the free flow of  
6 goods in commerce;

7 (F) constitutes an unfair method of com-  
8 petition in commerce;

9 (G) leads to labor disputes burdening and  
10 obstructing commerce and the free flow of  
11 goods in commerce;

12 (H) interferes with the orderly and fair  
13 marketing of goods in commerce; and

14 (I) in many instances, may deprive workers  
15 of equal protection on the basis of sex in viola-  
16 tion of the 5th and 14th amendments.

17 (4)(A) Artificial barriers to the elimination of  
18 discrimination in the payment of wages on the basis  
19 of sex continue to exist decades after the enactment  
20 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
21 201 et seq.) and the Civil Rights Act of 1964 (42  
22 U.S.C. 2000a et seq.).

23 (B) Elimination of such barriers would have  
24 positive effects, including—

1 (i) providing a solution to problems in the  
2 economy created by unfair pay disparities;

3 (ii) substantially reducing the number of  
4 working women earning unfairly low wages,  
5 thereby reducing the dependence on public as-  
6 sistance;

7 (iii) promoting stable families by enabling  
8 all family members to earn a fair rate of pay;

9 (iv) remedying the effects of past discrimi-  
10 nation on the basis of sex and ensuring that in  
11 the future workers are afforded equal protection  
12 on the basis of sex; and

13 (v) ensuring equal protection pursuant to  
14 Congress' power to enforce the 5th and 14th  
15 amendments.

16 (5) The Department of Labor has important  
17 and unique responsibilities to help ensure that  
18 women receive equal pay for doing work that is sub-  
19 stantially equal to men's work.

20 (6) The Department of Labor is responsible  
21 for—

22 (A) collecting and making publicly avail-  
23 able information about women's pay;

24 (B) ensuring that companies receiving  
25 Federal contracts comply with anti-discrimina-

tion affirmative action requirements of Executive Order 11246 (relating to equal employment opportunity);

(C) disseminating information about women's rights in the workplace;

(D) helping women who have been victims of pay discrimination obtain a remedy; and

(E) being proactive in investigating and prosecuting equal pay violations, especially systemic violations, and in enforcing all of its mandates.

(7) With a stronger commitment by the Department of Labor to its responsibilities, increased information about the provisions added by the Equal Pay Act of 1963, wage data, and more effective remedies, women will be better able to recognize and enforce their rights.

(8) Certain employers have already made great strides in eradicating unfair pay disparities in the workplace and their achievements should be recognized.

**SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY REQUIREMENTS.**

(a) REQUIRED DEMONSTRATION FOR AFFIRMATIVE DEFENSE.—Section 6(d)(1) of the Fair Labor Standards

1 Act of 1938 (29 U.S.C. 206(d)(1)) is amended by striking  
2 “(iv) a differential” and all that follows through the period  
3 and inserting the following: “(iv) a differential based on  
4 a bona fide factor other than sex, such as education, train-  
5 ing or experience, except that the bona fide factor defense  
6 shall apply only if—

7 “(I) the employer demonstrates that—

8 “(aa) such factor—

9 “(AA) is job-related with respect to  
10 the position in question; or

11 “(BB) furthers a legitimate business  
12 purpose, except that this item shall not  
13 apply where the employee demonstrates  
14 that an alternative employment practice  
15 exists that would serve the same business  
16 purpose without producing such differen-  
17 tial and that the employer has refused to  
18 adopt such alternative practice; and

19 “(bb) such factor was actually applied and  
20 used reasonably in light of the asserted jus-  
21 tification; and

22 “(II) upon the employer succeeding under sub-  
23 clause (I), the employee fails to demonstrate that  
24 the differential produced by the reliance of the em-

1        ployer on such factor is itself the result of discrimi-  
2        nation on the basis of sex by the employer.

3        An employer that is not otherwise in compliance with this  
4        paragraph may not reduce the wages of any employee in  
5        order to achieve such compliance.”

6        (b) APPLICATION OF PROVISIONS.—Section 6(d)(1)  
7        of the Fair Labor Standards Act of 1938 (29 U.S.C.  
8        206(d)(1)) is amended by adding at the end the following:  
9        “The provisions of this subsection shall apply to applicants  
10       for employment if such applicants, upon employment by  
11       the employer, would be subject to any provisions of this  
12       section.”.

13       (c) ELIMINATION OF ESTABLISHMENT REQUIRE-  
14       MENT.—Section 6(d) of the Fair Labor Standards Act of  
15       1938 (29 U.S.C. 206(d)) is amended—

16                (1) by striking “, within any establishment in  
17       which such employees are employed,”; and

18                (2) by striking “in such establishment” each  
19       place it appears.

20       (d) NONRETALIATION PROVISION.—Section 15(a)(3)  
21       of the Fair Labor Standards Act of 1938 (29 U.S.C.  
22       215(a)(3)) is amended—

23                (1) by striking “or has” each place it appears  
24       and inserting “has”; and

1           (2) by inserting before the semicolon the fol-  
2           lowing: “, or has inquired about, discussed, or other-  
3           wise disclosed the wages of the employee or another  
4           employee, or because the employee (or applicant) has  
5           made a charge, testified, assisted, or participated in  
6           any manner in an investigation, proceeding, hearing,  
7           or action under section 6(d)”.

8           (e) ENHANCED PENALTIES.—Section 16(b) of the  
9           Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is  
10          amended—

11           (1) by inserting after the first sentence the fol-  
12           lowing: “Any employer who violates section 6(d)  
13           shall additionally be liable for such compensatory or  
14           punitive damages as may be appropriate, except that  
15           the United States shall not be liable for punitive  
16           damages.”;

17           (2) in the sentence beginning “An action to”,  
18           by striking “either of the preceding sentences” and  
19           inserting “any of the preceding sentences of this  
20           subsection”;

21           (3) in the sentence beginning “No employees  
22           shall”, by striking “No employees” and inserting  
23           “Except with respect to class actions brought to en-  
24           force section 6(d), no employee”;



1           (4) by inserting after the sentence referred to  
2           in paragraph (3), the following: “Notwithstanding  
3           any other provision of Federal law, any action  
4           brought to enforce section 6(d) may be maintained  
5           as a class action as provided by the Federal Rules  
6           of Civil Procedure.”; and

7           (5) in the sentence beginning “The court in”—

8                   (A) by striking “in such action” and in-  
9                   serting “in any action brought to recover the li-  
10                  ability prescribed in any of the preceding sen-  
11                  tences of this subsection”; and

12                   (B) by inserting before the period the fol-  
13                  lowing: “, including expert fees”.

14           (f) ACTION BY SECRETARY.—Section 16(c) of the  
15           Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is  
16           amended—

17                   (1) in the first sentence—

18                           (A) by inserting “or, in the case of a viola-  
19                           tion of section 6(d), additional compensatory or  
20                           punitive damages,” before “and the agree-  
21                           ment”; and

22                           (B) by inserting before the period the fol-  
23                           lowing: “, or such compensatory or punitive  
24                           damages, as appropriate”;

1           (2) in the second sentence, by inserting before  
 2           the period the following: “and, in the case of a viola-  
 3           tion of section 6(d), additional compensatory or pu-  
 4           nitive damages”;

5           (3) in the third sentence, by striking “the first  
 6           sentence” and inserting “the first or second sen-  
 7           tence”; and

8           (4) in the last sentence—

9                   (A) by striking “commenced in the case”  
 10           and inserting “commenced—  
 11           “(1) in the case”;

12                   (B) by striking the period and inserting “;  
 13           or”; and

14                   (C) by adding at the end the following:

15           “(2) in the case of a class action brought to en-  
 16           force section 6(d), on the date on which the indi-  
 17           vidual becomes a party plaintiff to the class action”.

18 **SEC. 4. TRAINING.**

19           The Equal Employment Opportunity Commission  
 20           and the Office of Federal Contract Compliance Programs,  
 21           subject to the availability of funds appropriated under sec-  
 22           tion 11, shall provide training to Commission employees  
 23           and affected individuals and entities on matters involving  
 24           discrimination in the payment of wages.

1 **SEC. 5. NEGOTIATION SKILLS TRAINING FOR GIRLS AND**  
2 **WOMEN.**

3 (a) PROGRAM AUTHORIZED.—

4 (1) IN GENERAL.—The Secretary of Labor,  
5 after consultation with the Secretary of Education,  
6 is authorized to establish and carry out a grant pro-  
7 gram.

8 (2) GRANTS.—In carrying out the program, the  
9 Secretary of Labor may make grants on a competi-  
10 tive basis to eligible entities, to carry out negotiation  
11 skills training programs for girls and women.

12 (3) ELIGIBLE ENTITIES.—To be eligible to re-  
13 ceive a grant under this subsection, an entity shall  
14 be a public agency, such as a State, a local govern-  
15 ment in a metropolitan statistical area (as defined  
16 by the Office of Management and Budget), a State  
17 educational agency, or a local educational agency, a  
18 private nonprofit organization, or a community-  
19 based organization.

20 (4) APPLICATION.—To be eligible to receive a  
21 grant under this subsection, an entity shall submit  
22 an application to the Secretary of Labor at such  
23 time, in such manner, and containing such informa-  
24 tion as the Secretary of Labor may require.

25 (5) USE OF FUNDS.—An entity that receives a  
26 grant under this subsection shall use the funds made

1 available through the grant to carry out an effective  
2 negotiation skills training program that empowers  
3 girls and women. The training provided through the  
4 program shall help girls and women strengthen their  
5 negotiation skills to allow the girls and women to ob-  
6 tain higher salaries and the best compensation pack-  
7 ages possible for themselves.

8 (b) INCORPORATING TRAINING INTO EXISTING PRO-  
9 GRAMS.—The Secretary of Labor and the Secretary of  
10 Education shall issue regulations or policy guidance that  
11 provides for integrating the negotiation skills training, to  
12 the extent practicable, into programs authorized under—

13 (1) in the case of the Secretary of Education,  
14 the Elementary and Secondary Education Act of  
15 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins  
16 Vocational and Technical Education Act of 1998 (20  
17 U.S.C. 2301 et seq.), the Higher Education Act of  
18 1965 (20 U.S.C. 1001 et seq.), and other programs  
19 carried out by the Department of Education that the  
20 Secretary of Education determines to be appro-  
21 priate; and

22 (2) in the case of the Secretary of Labor, the  
23 Workforce Investment Act of 1998 (29 U.S.C. 2801  
24 et seq.), and other programs carried out by the De-

1       partment of Labor that the Secretary of Labor de-  
2       termines to be appropriate.

3       (c) REPORT.—Not later than 1 year after the date  
4 of enactment of this Act, and annually thereafter, the Sec-  
5 retary of Labor and the Secretary of Education shall pre-  
6 pare and submit to Congress a report describing the ac-  
7 tivities conducted under this section.

8       **SEC. 6. RESEARCH, EDUCATION, AND OUTREACH.**

9       The Secretary of Labor shall conduct studies and  
10 provide information to employers, labor organizations, and  
11 the general public concerning the means available to elimi-  
12 nate pay disparities between men and women, including—

13           (1) conducting and promoting research to de-  
14 velop the means to correct expeditiously the condi-  
15 tions leading to the pay disparities;

16           (2) publishing and otherwise making available  
17 to employers, labor organizations, professional asso-  
18 ciations, educational institutions, the media, and the  
19 general public the findings resulting from studies  
20 and other materials, relating to eliminating the pay  
21 disparities;

22           (3) sponsoring and assisting State and commu-  
23 nity informational and educational programs;

24           (4) providing information to employers, labor  
25 organizations, professional associations, and other

1 interested persons on the means of eliminating the  
2 pay disparities;

3 (5) recognizing and promoting the achievements  
4 of employers, labor organizations, and professional  
5 associations that have worked to eliminate the pay  
6 disparities; and

7 (6) convening a national summit to discuss, and  
8 consider approaches for rectifying, the pay dispari-  
9 ties.

10 **SEC. 7. TECHNICAL ASSISTANCE AND EMPLOYER RECOGNI-**  
11 **TION PROGRAM.**

12 (a) GUIDELINES.—

13 (1) IN GENERAL.—The Secretary of Labor shall  
14 develop guidelines to enable employers to evaluate  
15 job categories based on objective criteria such as  
16 educational requirements, skill requirements, inde-  
17 pendence, working conditions, and responsibility, in-  
18 cluding decisionmaking responsibility and de facto  
19 supervisory responsibility.

20 (2) USE.—The guidelines developed under  
21 paragraph (1) shall be designed to enable employers  
22 voluntarily to compare wages paid for different jobs  
23 to determine if the pay scales involved adequately  
24 and fairly reflect the educational requirements, skill  
25 requirements, independence, working conditions, and

1 responsibility for each such job with the goal of  
2 eliminating unfair pay disparities between occupa-  
3 tions traditionally dominated by men or women.

4 (3) PUBLICATION.—The guidelines shall be de-  
5 veloped under paragraph (1) and published in the  
6 Federal Register not later than 180 days after the  
7 date of enactment of this Act.

8 (b) EMPLOYER RECOGNITION.—

9 (1) PURPOSE.—It is the purpose of this sub-  
10 section to emphasize the importance of, encourage  
11 the improvement of, and recognize the excellence of  
12 employer efforts to pay wages to women that reflect  
13 the real value of the contributions of such women to  
14 the workplace.

15 (2) IN GENERAL.—To carry out the purpose of  
16 this subsection, the Secretary of Labor shall estab-  
17 lish a program under which the Secretary shall pro-  
18 vide for the recognition of employers who, pursuant  
19 to a voluntary job evaluation conducted by the em-  
20 ployer, adjust their wage scales (such adjustments  
21 shall not include the lowering of wages paid to men)  
22 using the guidelines developed under subsection (a)  
23 to ensure that women are paid fairly in comparison  
24 to men.

1           (3) TECHNICAL ASSISTANCE.—The Secretary of  
2       Labor may provide technical assistance to assist an  
3       employer in carrying out an evaluation under para-  
4       graph (2).

5       (c) REGULATIONS.—The Secretary of Labor shall  
6       promulgate such rules and regulations as may be nec-  
7       essary to carry out this section.

8       **SEC. 8. ESTABLISHMENT OF THE NATIONAL AWARD FOR**  
9                               **PAY EQUITY IN THE WORKPLACE.**

10       (a) IN GENERAL.—There is established the Secretary  
11       of Labor’s National Award for Pay Equity in the Work-  
12       place, which shall be evidenced by a medal bearing the  
13       inscription “Secretary of Labor’s National Award for Pay  
14       Equity in the Workplace”. The medal shall be of such de-  
15       sign and materials, and bear such additional inscriptions,  
16       as the Secretary of Labor may prescribe.

17       (b) CRITERIA FOR QUALIFICATION.—To qualify to  
18       receive an award under this section a business shall—

19               (1) submit a written application to the Sec-  
20       retary of Labor, at such time, in such manner, and  
21       containing such information as the Secretary may  
22       require, including at a minimum information that  
23       demonstrates that the business has made substantial  
24       effort to eliminate pay disparities between men and



1 women, and deserves special recognition as a con-  
2 sequence; and

3 (2) meet such additional requirements and  
4 specifications as the Secretary of Labor determines  
5 to be appropriate.

6 (c) MAKING AND PRESENTATION OF AWARD.—

7 (1) AWARD.—After receiving recommendations  
8 from the Secretary of Labor, the President or the  
9 designated representative of the President shall an-  
10 nually present the award described in subsection (a)  
11 to businesses that meet the qualifications described  
12 in subsection (b).

13 (2) PRESENTATION.—The President or the des-  
14 ignated representative of the President shall present  
15 the award under this section with such ceremonies  
16 as the President or the designated representative of  
17 the President may determine to be appropriate.

18 (d) BUSINESS.—In this section, the term “business”  
19 includes—

20 (1)(A) a corporation, including a nonprofit cor-  
21 poration;

22 (B) a partnership;

23 (C) a professional association;

24 (D) a labor organization; and

1           (E) a business entity similar to an entity de-  
2       scribed in any of subparagraphs (A) through (D);

3           (2) an entity carrying out an education referral  
4       program, a training program, such as an apprentice-  
5       ship or management training program, or a similar  
6       program; and

7           (3) an entity carrying out a joint program,  
8       formed by a combination of any entities described in  
9       paragraph (1) or (2).

10 **SEC. 9. COLLECTION OF PAY INFORMATION BY THE EQUAL**  
11 **EMPLOYMENT OPPORTUNITY COMMISSION.**

12       Section 709 of the Civil Rights Act of 1964 (42  
13 U.S.C. 2000e–8) is amended by adding at the end the fol-  
14 lowing:

15       “(f)(1) Not later than 18 months after the date of  
16 enactment of this subsection, the Commission shall—

17           “(A) complete a survey of the data that is cur-  
18       rently available to the Federal Government relating  
19       to employee pay information for use in the enforce-  
20       ment of Federal laws prohibiting pay discrimination  
21       and, in consultation with other relevant Federal  
22       agencies, identify additional data collections that will  
23       enhance the enforcement of such laws; and

24           “(B) based on the results of the survey and  
25       consultations under subparagraph (A), issue regula-

1        tions to provide for the collection of pay information  
 2        data from employers as described by the sex, race,  
 3        and national origin of employees.

4        “(2) In implementing paragraph (1), the Commission  
 5        shall have as its primary consideration the most effective  
 6        and efficient means for enhancing the enforcement of Fed-  
 7        eral laws prohibiting pay discrimination. For this purpose,  
 8        the Commission shall consider factors including the im-  
 9        position of burdens on employers, the frequency of required  
 10       reports (including which employers should be required to  
 11       prepare reports), appropriate protections for maintaining  
 12       data confidentiality, and the most effective format for the  
 13       data collection reports.”.

14       **SEC. 10. REINSTATEMENT OF PAY EQUITY PROGRAMS AND**  
 15       **PAY EQUITY DATA COLLECTION.**

16       (a) BUREAU OF LABOR STATISTICS DATA COLLEC-  
 17       TION.—The Commissioner of Labor Statistics shall collect  
 18       data on women workers in the Current Employment Sta-  
 19       tistics survey.

20       (b) OFFICE OF FEDERAL CONTRACT COMPLIANCE  
 21       PROGRAMS INITIATIVES.—

22       (1) IN GENERAL.—The Director of the Office of  
 23       Federal Contract Compliance Programs shall ensure  
 24       that employees of the Office—

1 (A)(i) shall use the full range of investiga-  
2 tory tools at the Office’s disposal, including pay  
3 grade methodology;

4 (ii) in considering evidence of possible com-  
5 pensation discrimination—

6 (I) shall not limit its consideration to  
7 a small number of types of evidence; and

8 (II) shall not limit its evaluation of  
9 the evidence to a small number of methods  
10 of evaluating the evidence; and

11 (iii) shall not require a multiple regression  
12 analysis or anecdotal evidence for a compensa-  
13 tion discrimination case;

14 (B) for purposes of its investigative, com-  
15 pliance, and enforcement activities, shall define  
16 “similarly situated employees” in a way that is  
17 consistent with and not more stringent than the  
18 definition provided in item 1 of subsection A of  
19 section 10–III of the Equal Employment Op-  
20 portunity Commission Compliance Manual  
21 (2000), and shall consider only factors that the  
22 Office’s investigation reveals were used in mak-  
23 ing compensation decisions; and

24 (C) shall designate not less than half of all  
25 nonconstruction contractor establishments each

1           year to prepare and file the Equal Opportunity  
2           Survey, required by section 60–2.18 of title 41,  
3           Code of Federal Regulations, and shall review  
4           and utilize the responses to the survey to iden-  
5           tify contractor establishments for further eval-  
6           uation.

7           (2) REGULATIONS.—In promulgating any regu-  
8           lations with respect to the compensation discrimina-  
9           tion cases, the Secretary of Labor, in establishing  
10          standards for similarly situated employees, shall in-  
11          clude examples of similar jobs.

12          (c) DEPARTMENT OF LABOR DISTRIBUTION OF  
13          WAGE DISCRIMINATION INFORMATION.—The Secretary of  
14          Labor shall make readily available (in print, on the De-  
15          partment of Labor website, and through any other forum  
16          that the Department may use to distribute compensation  
17          discrimination information), accurate information on com-  
18          pensation discrimination, including statistics, explanations  
19          of employee rights, historical analyses of such discrimina-  
20          tion, instructions for employers on compliance, and any  
21          other information that will assist the public in under-  
22          standing and addressing such discrimination.

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2       There are authorized to be appropriated such sums  
3 as may be necessary to carry out this Act.

○